
(2013) 01 AHC CK 0270
In the Allahabad High Court

Case No : Writ - A No. 53777 of 2002 With Writ - A No. 9967 of 2012

Umesh Kumar Rastogi

APPELLANT

Vs

Distt.& Session Judge, Meerut & Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 14

Citation : (2013) 01 AHC CK 0270

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Heard Smt. Rama Goel "Bansal", Advocate for petitioner in both writ petitions and Sri Ajay Rajendra as well as Sri Siddhartha Verma, Advocates for respondents no. 3 and 4 in Writ Petition No. 53777 of 2002.

2. The Rent Control and Eviction Officer, Meerut (hereinafter referred to as the "RCEO") entertaining an application filed by respondent no. 2 in the year 2000 in respect to accommodation in question consisting of one room, Baithak, Verandah, Kitchen and common toilet in House No. 88 Holi Mohalla, Meerut declared vacancy and rejected petitioner's application for regularisation of tenancy vide impugned order dated 11.07.2002, whereagainst petitioner's revision has been dismissed by District Judge, Meerut vide order dated 03.09.2002. Both these orders have been challenged in Writ Petition No. 53777 of 2002 (hereinafter referred to as the "first writ petition").

3. The Writ Petition No. 9967 of 2012 (hereinafter referred to as the "second writ petition") has been preferred by same petitioner aggrieved by order of allotment dated 05.04.2007 and revisional order dated 09.02.2012 which are consequential to the proceedings under challenge in first writ petition.

4. Learned counsel for the petitioner submitted that petitioner entered into tenancy on accommodation in question through her mother pursuant to rent note dated 13.12.1973 executed by landlord of accommodation in question, Smt.

Pisto Devi wife of Late Gauri Shankar; and, on the basis of said document petitioner claimed regularisation of tenancy under Section 14 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") but the said claim has been rejected by RCEO while proceeding to pass order under Section 16 read with Section 12 of Act, 1972, pursuant to the proceedings initiated on an application filed by respondent no. 4 in first writ petition on the ground that firstly in 1973 petitioner was 16 years old and was minor and secondly there was no other document to show his tenancy having commenced in 1973. The Revisional Court has added one more ground that photostat document is not admissible evidence.

5. It is contended that there is no provision that an action for the benefit of minor cannot be taken through her natural guardian. In the present case, petitioner entered into tenancy through her mother on a rent note executed by landlord and there was no challenge to said document that it was forged and fictitious document, yet the courts below wholly illegally and unlawfully discarded the same for the reasons not sustainable in law and, therefore, the impugned orders are liable to be set aside. It is also contended that since possession of accommodation in question relates back earlier to 1975, the petitioner was entitled for regularization of tenancy under Section 14 of Act, 1972.

6. Sri Ajay Rajendra, learned counsel appearing for respondent no. 4 in first writ petition though could not dispute that a minor through her natural guardian can enter into contract and further that provisions of Evidence Act, as such, are not applicable before RCEO but submitted that there was no document showing that any rent etc. was paid by petitioner to landlord, therefore, it cannot be said that petitioner got possession of the accommodation in question in 1973.

7. In the present case order dated 10.08.2000 passed by RCEO shows that Sri Kailash Chandra Sharma, who was found at the disputed premises at the time of inspection by Rent Control Inspector, stated that petitioner, Umesh Kumar Rastogi is in possession of disputed accommodation for the last about 15 years though has not paid any rent till date. It has also come on record that Smt. Pisto Devi died sometimes in 1993 and during her life time she had issued certain rent receipts to petitioner which he placed on record before courts below. He also filed documents and orders passed by Trial Court in Original Suit No. 505 of 2002 granting ad interim injunction favour of petitioner. Several persons, namely, Smt. Shanti Devi, Sri Vijay Kumar, Sri Mukesh Kumar, Sri Mahesh Chandra Sharma, Sri Kishan, Sri Mandal Sen and Sri Ram Kishan Gupta filed their affidavits stating that petitioner was a tenant in accommodation in question for the last 28 to 30 years. All these evidences have been negated by courts below firstly on the ground that house tax register of 1976 to 1981 do not mention petitioner's name as tenant and secondly, that as per transfer certificate he was minor in 1973⁷⁴ being 16 years of age and could not have entered into an agreement of tenancy.

8. In my view both the aforesaid grounds are fallacious so as to justify an

inference that petitioner was not in occupation of premises in dispute as claimed by him since 1973⁷⁴. A rent deed written by Smt. Pisto Devi, the landlord on 13.12.1973 having thumb impressions of petitioner's mother, Smt. Sheela Devi was/is on record. It was nobody's case before courts below that signature is not that of Smt. Pisto Devi or aforesaid document is forged or fictitious. In absence of any challenge to aforesaid document, the RCEO or Revisional Court themselves could not have ignored or omitted or discarded the aforesaid document only on the ground that original was not produced and only photocopy was produced when this document itself was not doubted. The aforesaid document finds support and corroboration from the affidavits filed by certain individuals, named above. These affidavits are mentioned in para 2 of Revisional Court's order though in discussion, it has not at all referred to them and completely omitted and ignored. The petitioner himself has not executed the agreement of tenancy but for the benefit of petitioner, may be a minor, her mother entered into tenancy with landlord, Smt. Pisto Devi. Learned counsel for the respondents could not dispute that for the benefit of a minor, a natural guardian can always enter into such an agreement. No law has been shown that it was impermissible. All the rent receipts are also on record. That being so, it cannot be said that there was no evidence at all to demonstrate that petitioner was in occupation of premises in dispute since 1973 and if that being so I find no justification or any valid reason not to extent benefit of Section 14 of Act, 1972 to him merely for the reason that in 1973 he was minor being 16 years of age. To my mind, the courts below have wholeheartedly proceeded to exclude petitioner from accommodation in question by denying him any rights whatsoever and in furtherance thereof have simply omitted or discarded the evidence on record in a most illegal and unlawful manner.

9. So far as the house tax register of 1976 to 1981 is concerned, nonmention of petitioner's name or his mother, cannot be taken to draw an inference solely on its basis that petitioner is not the tenant in building in question though sometimes when name is mentioned it is an evidence corroborating the possession of person whose name is mentioned. Solely on this basis no inference and conclusion can be drawn against petitioner.

10. Moreover, in respect to rent receipts no valid reason has been shown to disbelieve or discard the same. It is not the case of either parties that petitioner was let out the premises in question at any subsequent point of time and in fact no such subsequent point of time has been even suggested by anyone.

11. In the entirety of facts and circumstances, as discussed above, I do not find any reason to sustain the impugned orders.

12. In the result, both the writ petitions are allowed. The orders dated 11.07.2002 and 03.09.2002 in Writ Petition No. 53777 of 2002 and 05.04.2007 and 09.02.2012 in Writ Petition No. 9967 of 2012 are hereby quashed. The RCEO is directed to consider petitioner's claim for regularization of tenancy under Section 14 of Act, 1972 in view of the observations made above and in

accordance with law.

13. No costs.